

3550.54(c). All members of the household, as defined in § 1944.656 of this subpart, must be included when determining income. Grantees must use certifications, may require additional information from the homeowner, and should seek advice from their attorney.

(b) *Ownership.* Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Methods for assuring the intention of the homeowner to continue to occupy the unit after assistance will be established by the grantee. Any of the following will satisfy or fulfill this requirement of ownership:

(1) Full marketable title.

(2) An undivided or divided interest in the property to be repaired, rehabilitated, or replaced when not all of the owners are occupying the property. HPG assistance may be made in such cases when:

(i) The occupant has been living in the house for at least 1 year prior to the date of requesting assistance;

(ii) The grantee has no reason to believe the occupant's position of owner/occupant will be jeopardized as a result of the improvements to be made with HPG funds; and

(iii) In the case of a loan, and to the extent possible, the co-owner(s) should also sign the security instrument.

(3) A leasehold interest in the property to be repaired, rehabilitated, or replaced. When the potential HPG recipient's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than 5 years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) A life estate, with the right of present possession, control, and beneficial use of the property.

(5) Land assignments may be accepted as evidence of ownership only for American Indians living on a reservation, when historically the permits have been used by the tribe and have had the comparable effect of a life estate.

(c) *Other evidence of ownership.* The following items may be accepted as

evidence of ownership if a recorded deed cannot be provided:

(1) Any legal instrument, whether or not recorded, which is commonly considered evidence of ownership.

(2) Evidence that the person(s) receiving assistance from the HPG grantee is listed as the owner of the property by the local taxing authority and is responsible for any real estate taxes.

(3) Affidavits by others in the community that the person(s) receiving assistance from the HPG grantee has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26209, May 13, 1997]

#### **§ 1944.662 Eligibility of HPG assistance on rental properties or co-ops.**

(a) *Ownership.* The owner(s) of rental properties or co-ops must own the dwelling at the time of receiving assistance from the HPG grantee. The dwelling must be located in a rural area and be in need of housing preservation assistance. Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Owners of rental properties and co-ops are required to submit evidence of ownership for retention in the grantee's files. Any of the following will satisfy or fulfill this requirement of ownership:

(1) Full marketable title.

(2) An undivided or divided interest in the property to be repaired or rehabilitated.

(3) A leasehold interest in the property to be repaired or rehabilitated. Ownership interest in the property is based on a leasehold interest. The lease must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than 5 years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) Land assignments may be accepted as evidence of ownership only for American Indians living on a reservation, when historically the permits have been used by the tribe and have had the comparable effect of a life estate.

(b) *Tenant eligibility.* The following requirements must be met in order for a unit within a rental property or co-op to be assisted with HPG funds:

(1) The tenant must have income that meets the very low- or low-income definition.

(2) The tenant must be the intended occupant of the unit, but is not required to have resided previously in the dwelling.

(3) Any owner(s) who receives assistance from an HPG grantee or a member of the immediate family of the owner(s), who also resides in the unit within the dwelling to be repaired or rehabilitated is eligible to have their unit repaired or rehabilitated, if they are income eligible and meet all other requirements.

(c) *Identity of interest.* When an identity of interest, as defined in §1924.4(i) of subpart A of part 1924 of this chapter, exists between a nonprofit entity and the owner(s) of a dwelling, the property is not eligible for assistance.

**§ 1944.663 Ownership agreement between HPG grantee and rental property owner or co-op.**

HPG assistance may be provided by a grantee with respect to rental properties or co-ops only if the following conditions are met by the rental property owner(s) or by the co-op during a minimum 5 year restrictive period beginning on the date agreed upon in the agreement between the grantee and the rental property owner (or co-op). The HPG grantee is responsible for preparing, executing, and monitoring for compliance, the ownership agreement with the owner(s) of the rental property or the co-op. The rental property owner(s) or the co-ops are required to enter into an ownership agreement with the grantee to assure compliance with the requirements of this section.

(a) *Ownership agreement.* At a minimum, the ownership agreement must include the following clauses:

(1) The owner(s) agrees to make the units repaired or rehabilitated available for occupancy to very low- or low-income persons for a period of not less than 5 years, such restrictive period beginning on the date agreed upon in the agreement between the grantee and the rental property owner(s) or co-op.

(2) The owner(s) agrees to pass on to the tenants any reduction in the debt service payments resulting from the HPG assistance provided by the HPG grantee to the owner(s).

(3) The owner(s) of rental properties agrees not to convert the units to condominium ownership. In the case of co-ops, the owner(s) agrees not to convert the dwelling(s) to condominium ownership or any form of cooperative ownership not eligible under this section. This paragraph (a)(3) is subject to the restrictive period noted in paragraph (a)(1) of this section.

(4) The owner(s) agrees not to refuse to rent a unit to any person solely because the person is receiving or is eligible to receive assistance under any Federal, State, or local housing assistance program.

(5) The owner(s) agrees that the units repaired or rehabilitated will be occupied or available for occupancy by persons of very low- or low-income.

(6) The owner(s) agrees to enter into and abide by written leases with the tenants and that such leases shall provide that the tenants may be evicted only for good cause.

(7) The owner(s) agrees that, in the event the owner(s) or the owner's successors in interest fail to carry out the requirements of this section during the applicable period, they shall make a payment to FmHA or its successor agency under Public Law 103-354 in an amount that equals the total amount of assistance provided by the grantee plus interest thereon (without compounding) for each year and any fraction thereof that the assistance was outstanding. The interest rate shall be that as determined by FmHA or its successor agency under Public Law 103-354 at the time of infraction taking into account the average yield on outstanding marketable long-term obligations of the United States during the month preceding the date on which the assistance was initially made available.

(8) The owner(s) agrees that, notwithstanding any other provisions of law, the HPG assistance provided to the owner(s) shall constitute a debt which is payable in the case of any failure of this section and shall be secured by a security instrument provided by the